

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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GABLE D. HALL,

Plaintiff,

v.

C.O. KLEMP,<sup>1</sup>

Defendant.

OPINION AND ORDER

11-cv-93-slc

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Pursuant to this court's July 1, 2011 order, plaintiff Gable D. Hall has filed a proposed amended complaint. Now the court must determine whether plaintiff's proposed amended complaint is (1) frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because the amended complaint passes muster, plaintiff may proceed against defendant Klem.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his original and amended complaint, plaintiff alleges, and the court assumes for purposes of this screening order, the following facts.<sup>2</sup>

- Plaintiff Hall is incarcerated at the Columbia Correctional Institution, located in Portage, Wisconsin.
- Defendant Nick Klem is employed as a correctional officer at the institution.

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<sup>1</sup> C. O. Klem is the only defendant remaining in the proposed amended complaint.

<sup>2</sup> Plaintiff neglected to incorporate the allegations of his initial complaint into his amended complaint, but I surmise that he still intends to rely on them, so the court will consider those allegations as well.

- On Monday, November 15, 2010, Klemp collected plaintiff's manilla envelope addressed to Governor Doyle's Pardon Committee, which contained his request for a pardon, but did not mail it.
- Governor Doyle pardoned 178 individuals in his last year of office.
- In March and April 2011, some of plaintiff's outgoing legal mail was not delivered to the intended recipients.

## OPINION

In its July 1, 2011 order, the court explained that the relief plaintiff sought—release from custody—was not available even if plaintiff were to prevail on his claim that C. O. Klemp deliberately failed to mail plaintiff's pardon request. The court gave plaintiff the opportunity to submit an amended complaint that specified what relief he sought beyond release from prison along with the amount of and basis for any award of money damages, and the nature of and basis for injunctive or declaratory relief.

Plaintiff now has specified that he is seeking \$5,000 in money damages to make him “whole” for the alleged actions of defendant Kemp. He alleges that the basis for this award is his emotional distress and his court costs. Plaintiff appears to also be seeking injunctive relief because of continuing interference with his legal mail. To obtain this relief, however, plaintiff would have to show that defendant Klemp was personally involved in the continuing interference.

Because plaintiff has complied with this court's order, he will be allowed to proceed on his First Amendment claim that defendant Klemp deliberately failed to mail his pardon request. *Alston v. DeBruyn*, 13 F.3d 1036, 1041 (7th Cir. 1994).

## ORDER

IT IS ORDERED that:

- (1) Plaintiff Gable D. Hall's request to proceed against defendant C.O. Klemp on his First Amendment claim is GRANTED.
- (2) For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Assuming that an Assistant Attorney General will be representing defendant, then there will be no need for plaintiff separately to serve the Assistant Attorney General the documents plaintiff files with the court.
- (3) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (4) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
- (5) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendant. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendant.

Entered this 29<sup>th</sup> day of December, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge